



OFFICE OF THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

Hazardous Materials Regulations Board

[49 CFR Part 170]

[Docket No. HM-1; Notice 67-1]

RULES OF PROCEDURE

Notice of Proposed Rule Making

On October 19, 1967 (32 F.R. 14569), the Department published a notice of the creation of the Hazardous Materials Regulations Board, and stated its composition and jurisdiction.

The function of the Board is to handle all matters relating to regulations (including special permits for waiver or exemption, issued under Title 18, U.S.C. 831-835 and title IV and section 902(h) of the Federal Aviation Act of 1958 (49 U.S.C. 1421-1430, and 1472(h)), for the shipment and transportation of hazardous materials.

Regulations of the Board, other than special permits, for the shipment and transportation of hazardous materials will be published in the FEDERAL REGISTER and in the Code of Federal Regulations. Regulations now contained in Parts 171-190 of Title 49 CFR and in Part 103 of the Federal Aviation Regulations (14 CFR Part 103) are now designated as the "Hazardous Materials Regulations of the Department of Transportation".

At the present time, regulations under Title 18, U.S.C. 831-835 are issued under procedures established by the Interstate Commerce Commission which was vested with this regulatory function before the effective date of the Department of Transportation Act. Similarly, regulations in Part 103 of the Federal Aviation Regulations are currently issued under Part 11 thereof (14 CFR Part 11). Section 12 of the Department of Transportation Act provides that regulations (including procedural regulations) issued in the exercise of powers, functions, and duties transferred by the Act shall continue in effect until modified, terminated, or superseded in the exercise of authority under that Act.

The purpose of this notice is to request public comment on procedures proposed for use in prescribing all hazardous materials regulations under the cited authority. The proposed rule would supersede the applicable procedural rules of the Interstate Commerce Commission and, so far as Part 11 of the Federal Aviation Regulations relates to Hazardous Materials Regulations, would supersede that part. The proposal would establish one procedure for the issuance of all of those regulations.

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, D.C. 20590.

Communications received before January 30, 1968, will be considered by the Board before taking final action on the notice. All comments will be available for examination by interested persons at the Office of the Secretary, both before and after the closing date for comments. The proposals contained in this notice may be changed in the light of comments received.

The proposed rule provides for general notice of proposed rule making, to be published in the FEDERAL REGISTER, except in cases in which the Board finds that notice is impractical, unnecessary, or contrary to the public interest, and except for interpretive rules, general statements of policy, and rules relating to organization, procedure, or practices. It also provides for the consideration of petitions for rule making, special permits, reconsideration of rules, and extensions of time to comment on notices of proposed rule making. It specifically provides that a petition for reconsideration does not, automatically, stay the effectiveness of a rule, but such a stay may be ordered in the discretion of the Board.

Sections 556 and 557 of title 5, United States Code (formerly sections 7 and 8 of the Administrative Procedure Act) relating to the conduct of hearings on the record, would not apply to rule making under the proposed part. Therefore, hearings are not a required part of the rule-making procedure. However, hearings may be held, in the discretion of the Board, as a supplementary fact-finding procedure. Any hearing held would be nonadversary, with no formal pleadings, and any resultant rule would not necessarily be based exclusively on the record of the hearing.

This amendment is proposed under the authority of Title 18, U.S.C. sections 831-835, section 9 of the Department of Transportation Act (49 U.S.C. 1657), and title VI and section 902(h) of the Federal Aviation Act of 1958 (49 U.S.C. 1421-1430, and 1472(h)).

In consideration of the foregoing, it is proposed to amend Title 49 of the Code of Federal Regulations by adding the following new Part 170.

Issued in Washington, D.C., on November 13, 1967.

P. E. TRIMBLE,
Acting Commandant,
U.S. Coast Guard.

SAM SCHNEIDER,
Acting Administrator,
Federal Aviation Administration.

LOWELL K. BRIDWELL,
Administrator,
Federal Highway Administration.

A. SCHEFFER LANG,
Administrator,
Federal Railroad Administration.

PART 170—RULE-MAKING PROCEDURES OF THE HAZARDOUS MATERIALS REGULATIONS BOARD

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AUTHORITY: The provisions of this Part 170 issued under Title 18, U.S.C., secs. 831-835; sec. 9, Department of Transportation Act (49 U.S.C. 1657); title VI, sec. 902(h), Federal Aviation Act of 1958 (49 U.S.C. 1421-1430, 1472(h)).

Subpart A—General

§ 170.1 Applicability.

(a) This part prescribes general rule-making procedures that apply to the issue, amendment, and repeal of hazardous materials regulations under title 18, U.S.C. 831-835 and title VI and section 902(h) of the Federal Aviation Act of 1958 (49 U.S.C. 1421-1430 and 1472(h)). The regulations in this part are designated as the "Hazardous Materials Regulations" of the Department of Transportation.

(b) The Hazardous Materials Regulations Board, established by Department of Transportation Order 1100.11, dated July 27, 1967 (hereinafter referred to as the "Board") is composed of the Assistant Secretary for Research and Technology as Chairman; and the Commandant, U.S. Coast Guard, Federal

Aviation Administrator, Federal Highway Administrator, and Federal Railroad Administrator, or their designees, as members. The General Counsel of the Department is the legal adviser to the Board and the Director of the Office of Hazardous Materials is the Secretary to the Board.

(c) The signature of the Board member issuing a notice or adopting a regulation for a mode of transportation determines the applicability of that notice or rule to that mode of transportation. Where more than one mode is involved, the requisite number of authorized signatures is included.

(d) Records of the Board relating to rule-making proceedings, including the regulatory docket maintained under § 170.7, are available for inspection as provided in Part 7 of the regulations of the Secretary of Transportation (Part 7 of this title).

§ 170.3 Initiation of rule making.

The Board initiates rule making on the motion of any of its members. The Board also considers the recommendations of other agencies of the U.S. Government and of interested persons.

§ 170.5 Participation in rule-making proceedings.

Any person may participate in rule-making proceedings by submitting written information or views. The Board may also allow any person to participate in additional rule-making proceedings, such as informal meetings or hearings, held with respect to any rule.

§ 170.7 Regulatory docket.

Records of the Board concerning rule-making actions, including notices of proposed rule making, comments received in response to those notices, petitions for rule making (including special permits for waiver or exemption), petitions for rehearing or reconsideration, grants and denials of special permits, denials of petitions for rule making, records of additional rule-making proceedings under § 170.29 and final rules are maintained in current docket form in the Department.

Subpart B—Petitions for Rule Making

§ 170.11 Filing of petitions for rule making.

(a) Any person may petition the Board to issue, amend, or repeal a rule.

(b) Each petition filed under this section must—

(1) Be submitted, in duplicate, to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, D.C. 20590.

(2) Set forth the text or substance of the rule or amendment proposed, or specify the rule that the petitioner seeks to have repealed as the case may be.

(3) Explain the interest of the petitioner in the action requested.

(4) Contain information and arguments to support the action sought.

§ 170.13 Filing of petitions for special permits for waivers or exemptions.

(a) Any person may petition the Board for a special permit for a waiver or exemption from any provision of Parts 171-190 of this chapter or Part 103 of Title 14 (14 CFR Part 103). The Board may issue the special permit whenever it determines that—

(1) The petitioner has proposed an alternative which would provide at least an equivalent degree of safety, and

(2) Compliance with that provision of the regulations is—

- (i) Not possible;
- (ii) Not practicable;
- (iii) Unreasonable; or
- (iv) Not in the public interest.

(b) Each petition must comply with the following:

(1) Unless good cause is shown, be submitted at least 60 days before the proposed effective date.

(2) Be submitted in duplicate to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, D.C. 20590.

(3) Specify the regulatory provisions involved.

(4) State the justification for the permit, including reasons why the regulations are not appropriate, why the public interest would be served by the proposal, and the basis upon which the proposal would provide at least an equivalent degree of safety to that provided by the regulations concerned.

(5) Describe the proposal in detail, with drawings, plans, calculations, procedures, test results, previous approvals or permits, or other appropriate information. If specification containers or modified specification containers are proposed they must be described.

(6) State the chemical name, common name, hazard classification, form, quantity, properties, and characteristics of material covered by the proposal, including composition and percentage of each chemical if a solution or mixture.

(7) Describe any specific shipping or accident experience with the container type proposed.

(8) Name the proposed mode of transportation, and describe any special transport controls needed.

(9) State the name, address, and telephone number of the applicant, and, if tank motor vehicles are to be used, that of the motor carrier.

(10) Contain a statement or recommendation regarding any changes to the regulations which would be desirable to obviate the need for similar special permits.

§ 170.15 Processing of petitions for rule making and special permits.

(a) **General.** Each petition received under this subpart is referred to the Board for such action as its members consider necessary or desirable. Unless otherwise directed by the Board, no public hearing, argument, or other proceeding is held directly on a petition before its disposition under this section.

(b) *Grants.* If the petition meets the applicable requirements and the Board finds that adequate justification exists, the Board issues the special permit under this subpart or initiates rule-making action under Subpart C of this part.

(c) *Denials.* If the petition does not meet the applicable requirements, or the Board finds that adequate justification does not exist, the petition is denied.

(d) *Notification.* A notice of each grant or denial of a petition is issued to the petitioner.

Subpart C—Procedures

§ 170.21 General.

(a) Unless the Board finds, for good cause, that notice is impracticable, unnecessary, or contrary to the public interest, a notice of proposed rule making is issued and interested persons are invited to participate in the rule-making proceedings with respect to each substantive rule.

(b) Unless the Board determines that notice and public rule-making proceedings are desirable, interpretive rules, general statements of policy, and rules relating to organization, procedure, or practice are prescribed as final without notice or other public rule-making proceedings.

(c) In its discretion, the Board may invite interested persons to participate in the rule-making proceedings described in § 170.29.

§ 170.23 Contents of notices.

(a) Each notice of proposed rule making is published in the *FEDERAL REGISTER*, unless all persons subject to it are named therein and are served with a copy.

(b) Each notice, whether published in the *FEDERAL REGISTER* or served, includes—

(1) A statement of the time, place, and nature of the proposed rule-making proceeding;

(2) A reference to the authority under which it is issued;

(3) A description of the subjects and issues involved or the substance or terms of the proposed rule;

(4) A statement of the time for the submission of written comments and the number of copies required; and

(5) A statement of how and to what extent interested persons may participate in the proceeding.

§ 170.25 Petitions for extension of time to comment.

(a) Any person may petition the Board for an extension of time to submit comments in response to a notice of proposed rule making. The petition must be submitted in duplicate not later than 7 days before expiration of the time stated in the notice. The filing of the petition does not automatically extend the time for petitioner's comments.

(b) The Board grants the extension only if it is in the public interest and the petitioner shows good cause for the extension. If an extension is granted, it is granted to all persons by publication in the *FEDERAL REGISTER*.

§ 170.27 Consideration of comments received.

All timely comments are considered before final action is taken on a rule-making proposal. Late filed comments may be considered so far as practicable.

§ 170.29 Additional rule-making proceedings.

The Board may initiate any further rule-making proceedings that it finds necessary or desirable. For example, it may invite interested persons to present oral arguments, participate in conferences, appear at informal hearings, or participate in any other proceeding.

§ 170.31 Hearings.

(a) Sections 556 and 557 of title 5, United States Code (relating to the conduct of hearings required to be on the record) do not apply to hearings held under this part. As a factfinding proceeding, each hearing is nonadversary and there are no formal pleadings or adverse parties. Any rule issued in a case in which a hearing is held is not necessarily based exclusively on the record of the hearing.

(b) The Board designates one or more of its members or a representative to conduct any hearing held under this part. The General Counsel or a member of his staff serves as legal officer at the hearing.

§ 170.33 Adoption of final rules.

If a Board adopts a rule, it is published in the *FEDERAL REGISTER*, unless all persons subject to it are named and are served with a copy.

§ 170.35 Petition for rehearing or reconsideration of rule.

(a) Any interested person may petition the Board for reconsideration of any rule issued under this part. Such a petition must be transmitted, in duplicate, to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, D.C. 20590, at least 10 days before the effective date of the rule. Petitions filed after that time will be considered as petitions filed under § 170.11. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the rule is not possible, is not practicable, is unreasonable, or is not in the public interest.

(b) If the petitioner requests the consideration of additional facts, he must state the reason they were not presented to the Board within the allotted time.

(c) The Board does not consider repetitious petitions.

(d) Unless the Board otherwise provides, the filing of a petition under this section does not stay the effectiveness of a rule.

[F.R. Doc. 67-14060; Filed, Nov. 29, 1967; 8:48 a.m.]